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Paper No. 12
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Quiring Monuments, Inc.**

Serial No. 75/911,990

Mark J. Nielsen of Law Office of Mark J. Nielsen for **Quiring Monuments, Inc.**

Asmat A. Khan, Trademark Examining Attorney, Law Office 104
(Sidney Moskowitz, Managing Attorney).

Before **Cissel, Quinn** and **Hohein**, Administrative Trademark Judges.
Opinion by **Hohein**, Administrative Trademark Judge:

Quiring Monuments, Inc. has filed an application to register the term "MONUMENTS.COM" as a service mark for the "design for others of cemetery, commemorative and decorative memorials made of stone."¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's services, the term "MONUMENTS.COM" is merely descriptive of them.

¹ Ser. No. 75/911,990, filed on February 7, 2000, which is based on an allegation of a bona fide intention to use such term in commerce.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of such use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

Applicant, relying upon several electronic dictionary definitions of the term "monument" and numerous websites mentioning such term which were located by its counsel using various search engines, argues in its initial brief that, in the abstract:

The primary meaning of "monument" is large scale buildings, sculptures or parks typically dedicated to events or places of historical significance. "Monument" refers only secondarily to "cemetery, commemorative and decorative memorials made of stone." This view of the meaning of "monument" is amply supported by both dictionary definitions and evidence of customary usage demonstrated by web searches. Examples of the primary use of "monuments" include the Washington Monument, the Bunker Hill Monument, the Mount St. Helens National Volcanic Monument, and Bandelier National Monument.

In view thereof, applicant stresses that its design services "do not encompass buildings, sculptures or parks." While applicant "acknowledges that a secondary meaning of 'monument' includes headstones, cemetery markers and other smaller scale stone memorials," applicant argues that "'monument' refers to a broad range of distinct things and therefore does not directly and immediately convey information about the kinds of products that might result from the Applicant's design services." Applicant consequently contends that "an indefinite term like 'monument' is not merely descriptive of Applicant's design services because additional thought or conjecture is necessary to determine the nature of Applicant's services."

Continuing to premise its arguments improperly upon the meaning of the term "monument" in the abstract rather than in

relation to the definitions thereof which are pertinent with respect to applicant's services of designing, for others, cemetery, commemorative and decorative memorials made of stone, applicant submits that the excerpts made of record from the Examining Attorney's searches of the "NEXIS" database "are insufficient to demonstrate that MONUMENTS.COM is merely descriptive" of such services. Specifically, applicant asserts that:

The Examining Attorney submitted a selection of articles from two searches, one for "monuments w/s headstones" and one for "cemetery monuments." The absence of any search results for "monuments" alone confirms the Applicant's view that the primary meaning and most common usage of "monuments" is to refer to large scale buildings, sculptures and parks dedicated to events and places of historical significance. The Examining Attorney apparently found relevant articles only by searching for "monument" with other words like "headstone" and "cemetery" that clearly elicited one of the secondary meanings of the word. Thus, the Examining Attorney's evidence tacitly supports the Applicant's contention that the primary meaning of "monument" does not include "cemetery, commemorative and decorative memorials of stone."

Thus, according to applicant, the term "'monuments' has broader, primary meanings so that it does not convey an immediate idea of the kinds of goods that might eventually result from the Applicant's design services."

Finally, applicant maintains that "the Examining Attorney has not adequately considered the meaning of the subject mark as a whole." Instead, according to applicant, "the Examining Attorney has followed Examination Guide No. 2-99 and dissected the mark into two elements, an allegedly descriptive or

generic term and a top-level domain [name]." Such an approach, applicant insists, is improper inasmuch as it is contrary to *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001), which requires consideration of "the commercial significance of the mark as a whole."

We concur with the Examining Attorney, however, that the combination of the descriptive terms "MONUMENTS" and ".COM" to form the term "MONUMENTS.COM" is merely descriptive of applicant's services of the "design for others of cemetery, commemorative and decorative memorials made of stone." Combining such terms does not create a composite which, when considered in its entirety, is so incongruous or unusual, or which otherwise possesses a new meaning different from its constituent terms, as to possess no definitive meaning or significance other than that of an identifying mark for applicant's services.² Instead, as pointed out in the Examining Attorney's brief:

[T]he term "monument" may be defined as "a structure, such as a building or sculpture, erected as a memorial; an inscribed marker placed at a grave; tombstone." The top level domain [name] ".com" merely signifies to the public that the user of the domain name constitutes a commercial entity. In this

² See, e.g., *In re Medical Disposables Co.*, 25 USPQ2d 1801, 1804 (TTAB 1992), which notes with respect to the well settled proposition that otherwise descriptive terms may be combined to form a valid, arbitrary mark that:

[T]he mere act of combining does not in itself render the resulting composite a registrable trademark. Rather, it must be shown that in combination the descriptiveness of the individual words [and/or term] has been diminished, [such] that the combination creates a term so incongruous or unusual as to possess no definitive meaning or significance other than that of an identifying mark for the goods [or services]. See *In re Calspan Technology Products, Inc.*, 197 USPQ 647 (TTAB 1977).

regard, much like such terms as, "Inc.["],
["]Corp.["] or ["]Co.," the ".com" portion of
the proposed mark does not function in a
distinctive, source identifying capacity."

....

The Examining Attorney, in view thereof, maintains that in the context of applicant's services, "[n]o amount of thought or imagination is necessary to determine that "MONUMENTS.COM" for the aforementioned services merely describes a character[istic], feature of purpose of the identified design services." We agree.

As support for the above position, the Examining Attorney has made of record a definition from The American Heritage Dictionary of the English Language (3d ed. 1992) which defines "monument," in relevant part, as "1. A structure, such as a building or sculpture, erected as a memorial. 2. An inscribed marker placed at a grave; tombstone."³ The definitions of such term submitted by applicant with its request for reconsideration are to the same effect. Specifically, Merriam-Webster's Collegiate Dictionary lists "monument" in relevant part as meaning "3 a (1) : a lasting evidence, reminder, or example of someone or something notable or great ... b : a memorial stone or a building erected in remembrance of a person or event," while the Encarta World English Dictionary (N. American ed. 2001) sets forth such term as meaning "1. large stone statue or carving:

³ In addition, we judicially notice in this regard that the same dictionary defines "memorial" in pertinent part as "1. Something, such as a monument or holiday, intended to celebrate or honor the memory of a person or an event." It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d

something designed and built as a lasting public tribute to a person, a group of people, or an event ... **3. carved headstone:** a tombstone, plaque, or ornamental stone structure placed on somebody's grave. A monument in a cemetery is usually inscribed with the name and dates of birth and death of the deceased person, and often a religious quotation or verse." In addition, we judicially notice that the Microsoft Press Computer Dictionary (3d ed. 1997) sets forth ".com" in pertinent part as connoting "1. In the Internet's Domain Name System, the top-level domain that identifies addresses operated by commercial organizations. The domain name .com appears as a suffix at the end of the address."

Also of record in support of the Examining Attorney's position are excerpts retrieved from searches of the "NEXIS" electronic database using the search requests "MONUMENTS W/S HEADSTONES" and "CEMETERY MONUMENTS." Such evidence, the Examining Attorney maintains, shows that as stated in the final refusal, "[t]he term 'monuments' is commonly used in relation to cemetery, commemorative and decorative memorials, [which are] the subject matter of the applicant's design services." In particular, of the ten excerpts selected and printed from the 978 excerpts located through use of the former, the following are especially probative as to the significance which the term "monument" would project in the context of applicant's services of designing, for others, cemetery, commemorative and decorative memorials made of stone:

1372, 217 USPQ 505 (Fed. Cir. 1983); and Marcal Paper Mills, Inc. v.

"A man in the monument business donated a custom-designed headstone. A Philadelphia police officer offered an escort for the drive from the church to the cemetery." -- Philadelphia Inquirer, March 1, 2001 (article headlined: "7 years later, a stranger's devotion leads to a slain boy's burial");

"I also paid the monument company to etch my parents names on my sister's headstone." -- St. Petersburg Times, February 10, 2001; and

"MANY HEADSTONES WERE toppled and damaged when vandals tumbled cylindrical monuments through Hillgrove Cemetery." -- Dayton Daily News, February 4, 2001.

Similarly, with respect to the 50 excerpts located with the latter search request, the following are the most significant of the dozen made of record by the Examining Attorney as evidence of the meaning which the term "monument" would convey in the context of applicant's services:

"Products: Customized cemetery monuments, garden art and statuary, décor and gift items." -- Business First, July 7, 2000;

"Arthur L. Yoerk was so attached to the cemetery monument store he founded 31 years ago, it remained a part of his life years after he sold the business He was 71.

Before opening his cemetery monument business in 1965, the Olean native had long careers as an electrician and a truck driver.

....
Yoerk sold his cemetery monument business to Gibney Monument Works of Ferry but continued working at the store part-time" -- Buffalo News, May 15, 1996 (article headlined: "ARTHUR L. YOERK, OWNED MONUMENT STORE");

"These cemetery monuments believed stolen from area cemeteries were found in a Buffalo antique shop after the owner phoned police." -- Buffalo News, July 16, 1996

(article headlined: "MISSING MONUMENT FOUND;
SUSPECT CHARGED");

"When a grieving mother asked Bill
McIninch to design a cemetery monument for
her 7-year-old son, who had died of leukemia,
the owner of McIninch Monuments in Waterford
combined his design

....
McIninch's work has been a part of
Waterford's landscape--literally--for more
than 10 years. In nearby cemeteries,
monuments shaped like a truck, a Lear jet and
a mermaid rise above more traditional
headstones." -- Detroit News, September 4,
1996; and

"CEMETERY MONUMENT FALLS, KILLS BOY: A
13-year-old boy died after the 3-foot granite
top of a cemetery monument fell on his head
while he and several friends were playing
hide-and-seek, authorities said." -- Atlanta
Journal & Constitution, February 22, 1996.

Finally, while we have not ignored the fact that most
of the websites referred to by applicant mention the word
"monument" in the sense of its alternate meaning of large scale
buildings, sculptures or parks which are dedicated typically to
places or events or places of historical significance, such a
connotation is plainly inapposite in the context of applicant's
services. Rather, as shown by other website references, such as
those (including the mention of applicant) noted below, the word
"monument," in the context of designing and/or manufacturing
cemetery, commemorative and decorative memorials, clearly has the
meaning of a memorial headstone and/or gravesite marker, just as
it does in the case of the relevant "NEXIS" excerpts relied upon
by the Examining Attorney:

"Final Plans Choose from a selection of
headstones, monuments, tombstones, benches
and urns. Visit the display room and compare

prices." -- <http://www.nov.com/finalplans>, May 31, 2001;

"Pet Memorials, Pet Monuments, Grave Markers, Pet Gravestones and Pet Memorial Headstones for pet loss Pet memorial and monuments carved in granite. Dog & Cat memorial headstones, pet memorial grave markers, memorial gravestones for pet loss. Pet names beautifully carved in stone. Companion memorials for dogs, cats, birds." -- <http://www.oldyeller.net/>, February 28, 2001;

"Davis Monuments - Cemetery Monuments, Headstones, Grave Markers in Massachusetts Davis Monuments are expert craftsmen in granite, marble, slate and bronze cemetery monuments and memorials" -- <http://www.davismonuments.com/>, April 18, 2000;

"Quiring Monuments, the Nation's Most Creative, Personalized Granite Memorial Website About Quiring Monuments Quiring Monuments' Services Memorial Planning Cremation Services Warranty Information Get a Quote For further in formation, please contact: Quiring Monuments, Inc. ..." -- <http://www.monuments.com/>, August 29, 1999; and

"Donohoe & Carroll Monuments Donohoe & Carroll Memorials Quality in the Best Tradition Donohoe & Carroll has been providing the Bay Area with fine quality granite and marble products since 1875. We have done inscription lettering in all San Francisco Bay Area cemeteries." -- <http://www.zice.com/donohoe>, July 1, 1999.

Accordingly, while the term "monument" has several meanings in the abstract, we agree with the Examining Attorney that, in light of the above evidence, there can be no doubt that the term "MONUMENTS.COM, when used in relation to applicant's cemetery and commemorative stone design services, immediately conveys to consumers that the applicant designs 'monuments,' a

recognized term for cemetery tombstones." Such evidence is clearly sufficient to demonstrate the mere descriptiveness of the term "MONUMENTS.COM" with respect to applicant's services.

Specifically, the evidence demonstrates that, in the context of applicant's services, the word "MONUMENTS" in the term "MONUMENTS.COM" directly conveys significant information about the nature of applicant's services, namely, that they involve the design for others of cemetery, commemorative and decorative memorials made of stone inasmuch as such memorials, being a central characteristic or feature of applicant's design services, are commonly known and referred to by the synonym "monuments." A term which forthwith conveys information as to the nature of the goods provided by the associated services is merely descriptive of those services. See, e.g., In re Wickerware, Inc., 227 USPQ 970, 971 (TTAB 1985) ["WICKERWARE" for "mail order and distributorship services in the field of wicker furniture and accessories" designates "a central characteristic of appellant's services" and thus is not registrable].

The merely descriptive significance of the word "MONUMENT," moreover, is not lost or otherwise changed by its combination with the designation ".COM" to form the term "MONUMENTS.COM." This is because the ".COM" portion of the term "MONUMENTS.COM," being a top level domain name, would be regarded as designating a commercial website by the actual and potential customers of applicant's stone memorial design services and thus is lacking in service mark significance. See, e.g., 555-1212.com Inc. v. Communication House International Inc., 157 F. Supp. 2d

1084, 59 USPQ2d 1453, 1457-59 (N.D. Cal. 2001) [term "555-1212.com" is merely descriptive of "providing databases featuring telephone and directory information accessible via electronic communication networks" because, "[m]uch like the telephone number '411' for local calls, '555-1212' is the number one would dial (after an area code) to seek out telephone and directory information services outside of one's local area code" and thus, "[t]o the average consumer, '555-1212.com' would indicate a commercial web site on the Internet which provides similar telephone and directory information"]; and 1 J. McCarthy, McCarthy on Trademarks & Unfair Competition §7:17.1 (4th ed. 2002) at 7-28.1 ["a top level domain ['(TLD)'] indicator [such as '.com'] has no source indicating significance and cannot serve any trademark [or service mark] purpose" and "[t]he same is true of other non-distinctive modifiers used in domain names, such as 'http://www" and "html"; thus, because "the TLD '.com' functions in the world of cyberspace much like the generic indicators 'Inc.,' 'Co.,' or 'Ltd.' placed after the name of a company," "[a] top level domain indicator like '.com' does not turn an otherwise unregistrable designation into a distinctive, registrable trademark [or service mark]"].

Consequently, when used in connection with applicant's services of the "design for others of cemetery, commemorative and decorative memorials made of stone," the term "MONUMENTS.COM" in its entirety immediately describes, without conjecture or speculation, that a significant characteristic, feature, or subject matter of such services is the commercial design of

monuments of stone for cemetery, commemorative and decorative purposes. Plainly, in the context of applicant's services, no imagination, cogitation, mental processing or gathering of further information is necessary in order for customers to readily understand that applicant commercially designs monuments for others. Nothing in such term, as indicated previously, is ambiguous, incongruous or perhaps susceptible to any other plausible meaning. The term "MONUMENTS.COM" is accordingly merely descriptive of applicant's services within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed.